



**Caris Foundation International-Kenya v Mutuvi (Tribunal Case E160 of 2024) [2024] KEBPRT 1516 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1516 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E160 OF 2024  
CN MUGAMBI, CHAIR  
OCTOBER 11, 2024**

**BETWEEN**

**CARIS FOUNDATION INTERNATIONAL-KENYA ..... TENANT**

**AND**

**DORA MUENI MUTUVI ..... LANDLORD**

**RULING**

1. The Landlord/Respondent's notice of preliminary objection is brought on the following grounds:-
  - a. That the Tribunal lacks jurisdiction to entertain the Application herein as per Section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* as read together with Section 11 and 12 of the Act as well as the decision in Republic vs Chairperson Business Premises Rent Tribunal at Nairobi & Another ex parte Suraj Housing & Properties Ltd & 2 Others [2016] eKLR.
  - b. That the Tribunal lacks jurisdiction to entertain the Application herein as the lease agreement subject of the Application herein lapsed on 31.4.2024 and hence there is no subsisting Landlord and Tenant relationship between the Applicant and the Respondents in respect to Mbuyuni House erected on land portion numbers 1906, 1907 and 1908 Malindi.
2. The Complaint filed by the Tenant against the Landlord is brought on the grounds;
  - a. That the Landlord has refused, rejected and/or neglected to accept the official handover of the suit premises.
  - b. That the Landlord has refused, rejected and/or neglected to prepare an inventory of the suit property.
  - c. That the Landlord has failed to furnish proper accounts of deposit paid and deductions if any.



3. I have also read prayer (3) of the Tenant's notice of motion dated 1.7.2024 wherein the Tenant seeks the following orders;-

“That the Landlord/Respondent be compelled to accept the Tenant/Applicant's did officially hand over the premises back to them and the Landlord/Respondent's conduct of re-occupying, making structural adjustments and staying thereon amounts to implied acceptance...”

4. At paragraph 4 of the Applicant's supporting affidavit, the Tenant/Applicant has deponed as follows;-

“That the said lease agreement lapsed and the tenant informed the Landlord that they would not renew the said lease and their intention to exit the suit premises.”

5. At paragraph 9 of the supporting affidavit, the Tenant depones as follows;-

“That the Landlord has also proceeded to re-occupy and/or moved into the suit premises and embarked on structural adjustments and repairs without formal handover from the Tenant.”

6. It is clear from the above narration that the lease agreement between the parties has already expired and it is further clear that the Tenant has vacated the premises and the Landlord has taken possession thereof. The Tenant itself admits as much. In this circumstance, I am satisfied that there DOES NOT exist the relationship of a Landlord and Tenant between the parties and the Tribunal consequently NO LONGER has any jurisdiction in this matter.

In the case of; Pritam vs Ratilal & Another, [1972], EA 560, the court held as follows;-

“Therefore, the existence of the relationship of landlord and tenant is a pre-requisite to the application of the Act and where such relationship does not exist or it has come to or been brought to an end, the provisions of the Act will not apply. The applicability of the Act is a condition precedent to the exercise of jurisdiction by a Tribunal, otherwise the Tribunal will have no jurisdiction. There must be a controlled tenancy as defined in Section 2 to which the provisions of the Act can be made to apply. Outside it, the Tribunal has no jurisdiction.”

7. In the circumstances, there is no basis upon which the Tribunal can continue with these proceedings. I therefore uphold the preliminary objection by the Landlord and this matter is hereby dismissed for want of jurisdiction. The Tenant will bear the costs of the suit.

8. This file is closed.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11<sup>TH</sup> DAY OF OCTOBER, 2024.**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Mr. Kioko for the Landlord and Mr. Kiponda for the Tenant

